



Statement of Charging Principles

Postal Services

Statement

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Section 1

Summary

- 1.1 Under the Postal Services Act 2011 (“the Act”) Ofcom took over responsibility for regulating the postal sector on 1 October 2011. The Act allows us to impose an administrative charge on postal operators providing services within the scope of the universal postal service to meet costs incurred by us in carrying out our functions in relation to postal services. In order for us to impose an administrative charge we must publish and put in force a statement of the principles we are proposing to apply in setting charges for that year.
- 1.2 On 13 December 2011, Ofcom consulted on our proposals to change the Statement of Charging Principles for Postal Services published on 29 September 2011¹.
- 1.3 The proposals were to make amendments to this existing Statement of Charging Principles for Postal Services so that it would be consistent with the Act rather than referencing the Postal Services Act 2000 licensing regime.
- 1.4 The proposals were to have the effect of continuing to impose a charge on postal operators who provide postal services within the scope of the universal postal service consisting of letter services.
- 1.5 Ofcom also proposed to allow postal operators to pay the annual administrative charge by means of monthly payments where that annual charge is more than £75,000.
- 1.6 The updated Statement of Charging Principles (“the Statement”) will apply for the 2012/13 charging year (1 April 2012 to 31 March 2013), and any subsequent charging year, until we make a new Statement or revise the Statement.
- 1.7 During the 2012/13 charging year, we expect to undertake a review of the Statement and we may consider alternative methods for imposing an administrative charge on postal operators providing a service within the scope of the universal postal service. Therefore, the Statement will apply from the next charging year (i.e. the charging year 2012/13) and may be amended in future years.
- 1.8 The published Statement is contained in Annex 1.

¹ <http://stakeholders.ofcom.org.uk/consultations/postal-regulation/statement/> - Annex 4

Section 2

Responses to the consultation and Ofcom's decisions

- 2.1 On 13 December 2011, Ofcom consulted on proposals to revise the Statement of Charging Principles for Postal Services published on 29 September 2011².
- 2.2 The intention of the proposed amendments was to bring the principles into line with the new authorisation regime without introducing any substantive variation to the effects of the charging in the existing Statement of Charging Principles for Postal Services.
- 2.3 Ofcom took over responsibility of postal sector regulation on 1 October 2011. Due to the short timeframes and information available, Ofcom considered it appropriate to limit its proposed amendments to those necessary to bring the Statement into line with the Postal Services Act 2011 (rather than referring to the old licensing regime).
- 2.4 Further to considering stakeholders' responses, Ofcom has decided to make some amendments to the draft Statement of Charging Principles for Postal Services as presented in the consultation in order to clarify these intentions.
- 2.5 The Statement is included as Annex 1.
- 2.6 Responses to the consultation were provided by: Consumer Focus, Mail Competition Forum ("MCF"), Royal Mail Group Ltd ("Royal Mail") and one further respondent who requested confidentiality. These have been published on the Ofcom website, except for the response from the stakeholders who requested confidentiality.

Payment terms of the annual administrative charges

- 2.7 Royal Mail welcomed the proposal to allow operators to pay in monthly instalments if the annual fee is more than £75,000. Royal Mail indicated that it would be helpful to know when Ofcom would give notice of charges due. MCF commented that payment by monthly instalments should be allowed regardless of the level of the annual fee.
- 2.8 In response to Royal Mail's comment, Ofcom has amended the draft Statement to include information about the timing of when the notice of these charges will be given. The threshold for allowing payment by instalments will be re-considered in the next review of the Statement.
- 2.9 MCF suggested that it is unreasonable to specify that payment is due on receipt of the notice amount served and that 30 day payment terms should be allowed.

The immediate payment terms are standard Ofcom terms and apply to all Ofcom stakeholders. Ofcom was created without working capital provision and as a result the costs of regulation are invoiced in advance based on an estimated cost reflected within the overall annual budget. This is to ensure that funds are available to

² <http://stakeholders.ofcom.org.uk/consultations/postal-regulation/statement/> - Annex 4

undertake regulatory work. Our expectation is therefore for postal operators, consistent with other stakeholders, to settle invoices in line with Ofcom payment terms.

Turnover thresholds

- 2.10 Royal Mail and MCF both commented on the turnover threshold level of £10m. Royal Mail thought this was high in relation to the turnover thresholds that Ofcom has set for the telecoms sector (£5m) and stated that Ofcom did not explain the reason for retaining this threshold. MCF questioned the logic of a single £10m turnover threshold.
- 2.11 Ofcom retained the £10m threshold that was applied in the previous licensing regime to ensure that the proposed principles did not change the effect of the charging regime. Threshold levels and threshold options will be re-considered in the next review of the Statement.

Change of references to the previous licensing regime

- 2.12 MCF stated that Ofcom changed the existing Statement by removing references to the previous licensing regime and provided no explanation or justification for this.
- 2.13 As stated in paragraphs 1.4 and 1.5 of Ofcom's consultation, the amendments that we proposed were to make the Statement of Charging Principles for Postal Services consistent with the new Postal Services Act 2011 rather than referring to the old licensing regime. In paragraph 1.8 we also specified that: "*The proposed amendments would have the effect of continuing to impose a charge on postal operators who provide postal services within the scope of the universal postal service consisting of letter services*".

Scope of the universal service, access services and the administrative fees

- 2.14 Royal Mail pointed out that the definition contained in paragraph 3.5 of the draft Statement under which it will collect charges is different from that proposed elsewhere, in particular N1.1.2 of the Notification Condition.
- 2.15 MCF further notes that the inclusion of large letter items is an extension of regulation for letters weighing between 350g (previous licensing regime) and 750g and states that this is unjustified and undesirable but also appears to discriminate against operators providing small packet services. MCF argues that the universal service obligation extends to items weighing up to 20kg and it therefore seems wrong to extend regulation to only a restricted part of the market. According to MCF, if Ofcom intends to extend regulation beyond the "regulated postal services" it must justify this discrimination and establish that it is necessary or else modify its proposal but this would involve extending the obligation to pay for Ofcom's costs to parcel operators on which extensive consultation would be needed.
- 2.16 For consistency, Ofcom has replaced the definitions of "letters" and "large letters", as used in the consultation, with the definition of "letters" set out in N1.1.2 of the Notification Condition.

- 2.17 MCF expressed serious concern that the draft Statement allowed substantial, unnecessary and unjustified extension of the services that would be subject to regulatory charges. It stated that in its current form the Statement creates uncertainty about who would be subject to charges and therefore requests Ofcom to clarify which services will be within the scope of the universal service and, therefore, subject to regulatory charges. MCF suggests that Ofcom should provide the same clarity as the Postal Services Act 2000 (“PSA 2000”) and Postcomm about the services that are in the scope of the universal service and could achieve this by containing a reference in the Statement to the PSA 2000.
- 2.18 The Act gives Ofcom a broad discretion as to the services that may incur a charge, as long as these are services falling within the scope of the universal postal service³. Ofcom does not consider it appropriate to fetter its discretion by providing a list of specific postal products falling within the scope of the universal postal service. This approach allows flexibility to react to any future market developments. As with the other sectors that we regulate, where appropriate, we will assess whether or not a specific service should fall within the scope of the universal postal services on a case by case basis. Notwithstanding this, to ensure that there is no substantial variation to the effects of the charging in the existing Statement of Charging Principles for Postal Services, Ofcom has expressly excluded turnover from premium and express services for the calculation of administrative fees.
- 2.19 Royal Mail is of the view that access operators use the universal service delivery network and should therefore make a fair contribution to the cost of regulating the universal service. They also commented that Ofcom’s proposal to exclude access payments for operators other than the universal service provider is inconsistent with the treatment in telecoms. If this treatment were to continue, Royal Mail suggests a lower turnover threshold to apply.
- 2.20 The treatment of this turnover will be re-considered in the next review of the Statement.
- 2.21 However, as noted earlier, to ensure that there is no substantive variation to the effects of the charging in the existing Statement of Charging Principles for Postal Services, Ofcom has expressly excluded turnover from access services for the calculation of administrative fees.

Estimated financial implications of Ofcom proposals

- 2.22 MCF argued that no information was provided on the expected cost of Ofcom carrying out its postal functions, nor the likely amount of total turnover generated by operators liable for charges, hence it was impossible for any postal operator to estimate financial implications of the Ofcom proposals.
- 2.23 Ofcom was consulting on the general *Principles* of charging rather than the application of such principles in light of Ofcom’s costs and stakeholders’ relevant turnover. Ofcom’s Tariff Tables are published annually on or before 31 March for the following charging year and will include the charges to the Postal sector. Furthermore, all historical costs of regulation are publicly available and Ofcom believe this to be a reasonable indication of future costs. We would expect that postal operators would have a good idea of their market share in terms of relevant

³ See, in particular, paragraph 1 of Schedule 4 to the Postal Services Act 2011.

turnover and therefore would be in a position to calculate the estimated financial implications.

Impact assessment

- 2.24 MCF noted no impact assessment was included.
- 2.25 Under the Communications Act 2003, we are required to publish an impact assessment where a proposal in connection with the carrying out of our functions is “important”. A proposal is “important” if its implementation is likely to involve a major change in the activities carried on by Ofcom or have a significant impact on persons carrying on business in the markets we regulate, or the general public. The amendments as intended were not deemed “important” as there was no intention to substantially change the effects of the previous charging regime, and therefore there would be no significant impact.

Section 3

Legislative framework

3.1 The statutory provisions relating to the collection of administrative charges for services falling within the scope of the universal postal service are found in section 43 of the Act and Schedule 4 to the Act.

3.2 Paragraph 1 of Schedule 4 to the Act states that:

“If, at any time in a charging year, a postal operator provides a service within the scope of the universal postal service, the operator must, in respect of the service, pay to Ofcom the administrative charge (if any) that is fixed by Ofcom as applicable to the operator”.

3.3 References to the provision of “a service within the scope of the universal postal service” are to be read in accordance with Section 40 of the Act⁴, which defines such postal service as including 3 categories of services:

- firstly, those services falling within the description of a service set out in the universal postal service order made by Ofcom under s.30 of the Act (the “UPS Order”);
- secondly, those services that would fall within the description of a service set out in the UPS Order, but for the fact that:

(i) collection and delivery are not provided on each of the days required under Section 31 of the Act; or

(ii) the service is not provided throughout the UK; or

(iii) the service is not provided at an affordable uniform price.

- finally, a service is also within the scope of the universal postal service if in the opinion of Ofcom the service is of a kind that, from the point of view of users of postal services, could be reasonably be said to be interchangeable with a service of a description set out in the UPS Order.

3.4 Paragraph 2 of Schedule 4 to the Act provides that:

“Ofcom may fix the administrative charge for a charging year only if-
(a) at the time the charge is fixed there is in force a statement by Ofcom of the principles that Ofcom are proposing to apply in fixing charges under this paragraph for that year; and
(b) the charge is fixed in accordance with those principles”.

⁴ See Section 65(2)(b) of the Act.

3.5 In setting the principles, Ofcom must be satisfied that:

- the principles are likely to secure, on a year by year basis, that the aggregate amount of the charges payable to Ofcom is sufficient to meet, but does not exceed, the annual cost to Ofcom of carrying out certain functions as specified in paragraphs 2 of Schedule 4 to the Act ('Ofcom's Postal Services Functions'), on the basis of an estimate of costs;
- the charges are objectively justifiable and proportionate; and
- the relationship between meeting the cost of carrying out Ofcom's Postal Services Functions and the amount of the charge is transparent.

3.6 Before revising a statement of charging principles, Ofcom must undertake a consultation on the revised principles⁵. The way in which a statement of charging principles may be revised is by the publication of the revised statement in such manner as Ofcom consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it⁶.

3.7 The way in which a charge is to be fixed is by the publication, or giving of such notification as Ofcom consider appropriate, for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it⁷.

⁵ Paragraph 3(6) of Schedule 4 to Act

⁶ Paragraph 3(1) of Schedule 4 to the Act.

⁷ Paragraph 3(1) of Schedule 4 to the Act.

Annex 1

Ofcom Statement of Charging Principles – Postal Services

Statement of charging principles

- A1.1 This statement follows a consultation⁸ by Ofcom on the principles that Ofcom would apply in order to set annual administrative charges pursuant to the Postal Services Act 2011 (“the Act”).
- A1.2 This statement was prepared under paragraph 7 of Schedule 9 of the Act and revised in accordance with paragraphs 3(6) and 3(7) of Schedule 4 of the Act. This statement applies in relation to the 2012/13 charging year (i.e. the period beginning 1 April 2012 and ending with March 2013) and any subsequent charging year (i.e. any subsequent period of 12 months beginning with 1 April).

Administrative charges

- A1.3 Administrative charges will be set at a level to ensure that Ofcom will recover the estimated cost incurred in carrying out its postal services functions as set out in the Act.
- A1.4 Administrative charges will be payable by those postal operators which:
- 1.4.1 provide Letter Services that are provided as services within the scope of the postal universal services as defined in section 40 of the Act;
 - and
 - 1.4.2 generated turnover exceeding £10 million, in the last but one 12 month period commencing on 1 April prior to the Charging Year in question⁹, from Letter Services provided as services within the scope of the universal postal services as defined in section 40 of the Act.
- A1.5 The turnover referred to in paragraph 1.4.2 above shall not include turnover generated from Access Services, Express Services and Premium Services.
- A1.6 For the purposes of interpreting paragraphs A1.4 and A1.5, the following definitions shall apply:
- 1.6.1 “**Access Services**” means the conveyance and delivery of letters to the universal service provider for onward conveyance and delivery by the universal service provider;

⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/post-socp/summary/post-socp.pdf>

⁹ for example, the Charging Year commences on 1 April 2012, the last but one 12 month period commencing on 1 April will be 1 April 2010 until 31 March 2011

- 1.6.2 “**Charging Year**” means a twelve month period commencing on 1 April in a calendar year and ending 31 March in the immediately following calendar year;
- 1.6.3 “**Express Services**” means any postal service guaranteeing next day delivery¹⁰;
- 1.6.4 “**Letter**” has the same meaning as set out in section 65(1) of the Act save that it does not include postal packets as defined in subsection (b) of that definition;
- 1.6.5 “**Letter Services**” means any of the services referred to in section 27(1) of the Act concerning a Letter;
- 1.6.6 “**Premium Services**” means any postal service including additional features which are paid for, such as recorded delivery, insured delivery and tracked items.
- A1.7 The charge payable by a particular postal operator identified in 1.4 above will be calculated by multiplying the total estimated cost of regulation by that operator’s share of turnover expressed as a percentage of the total turnover generated by all operators identified in 1.4 above.
- A1.8 If the annual administrative charge as calculated in 1.6 above is more than £75,000 Ofcom will allow monthly payment of the fee. Payment is due on receipt of the notice of the amount due, served on the postal operator by Ofcom.
- A1.9 The tariff applicable to the sector will be set out in the tariff tables which will be published on or before 31st March for the following charging year.

Attribution of costs

- A1.10 Each item of cost recorded in Ofcom’s accounts is attributed to the activities within a sector that Ofcom regulates.
- A1.11 Direct costs of activities are recorded directly against a sector and indirect costs are added by apportionment. Indirect apportioned costs represent common costs which are spread over each of the direct activities on a fair, consistent and equitable basis using standard cost apportionment methods.

Over or under recovery of spend

- A1.12 The amounts due from postal operators will be collected annually in advance and any over or under recovery of expenditure arising in the charging year will be adjusted in the charge for the following charging year.

¹⁰ For the purposes of this definition, we do not consider 1st class mail as an express service because Royal Mail is required to ensure that First Class mails arrives next day in 93% of cases. Therefore, under this service requirement, next day delivery is not ‘guaranteed’ in relation to each 1st class mail

- A1.13 Amounts paid to the Postal Services Commission in respect of its last “relevant year” as defined in the conditions of licences issued by it under the Postal Services Act 2000 shall be taken into account for this purpose as though the sums paid, and the regulated activities to which they related, were sums paid to Ofcom in respect of Ofcom’s functions under the Act.